

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ADRIAN HUMBERTO RIOS, an individual, by and through his Guardian Ad Litem Brenda Yvette Ceja; M.P.R., a minor individual, by and through her Guardian ad Litem, Brenda Yvette Ceja; ADRIAN RIOS, Jr., an individual,

Plaintiffs - Appellees,

v.

CITY OF AZUSA; BENJAMIN CYPHER, an individual; V. GARCIA, an individual; RICHARD MARTINEZ, an individual; STEVEN D. SEARS, an individual; MICHAEL DEANDA, an individual; MICHAEL WISE, an individual; ZACHARY CHADWICK, an individual,

Defendants - Appellants,

and

COUNTY OF LOS ANGELES, JACOB DAO, an individual,

Defendants.

No. 24-5734

D.C. No.
2:22-cv-03968-
WLH-RAO

OPINION

Appeal from the United States District Court
for the Central District of California
Wesley L. Hsu, District Judge, Presiding

Argued and Submitted November 21, 2025
Pasadena, California

Filed August 20, 2026

Before: Marsha S. Berzon, N. Randy Smith, and Eric D.
Miller, Circuit Judges.

Opinion by Judge Miller

SUMMARY*

Jurisdiction / Qualified Immunity

The panel dismissed for lack of jurisdiction an interlocutory appeal from an order denying a motion for summary judgment on the basis of qualified immunity in an action brought pursuant to 42 U.S.C. § 1983, state law, and the Americans with Disabilities Act by Adrian Rios and his two children against the City of Azusa, Los Angeles County, individual police officers, and a paramedic.

In the course of handcuffing Rios to take him into custody, officers twice used a Taser and repeatedly punched, kicked, or otherwise struck him, at least 24 times. Rios

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

suffered serious brain damage and is now in a persistent vegetative state.

The panel held that it lacked jurisdiction to review the district court's decision not to exclude certain evidence as a discovery sanction. Under *Johnson v. Jones*, 515 U.S. 304 (1995), the court may not review a portion of a district court's summary judgment order that, though entered in a qualified immunity case, determines only a question of evidence sufficiency. Because the crux of defendants' argument was that the district court abused its discretion in denying their motion to strike a declaration, defendants raised only a question about evidence sufficiency that may not be reviewed in an interlocutory appeal.

The panel further rejected defendants' contentions that pendent jurisdiction applied. Because the panel lacked jurisdiction to review the denial of qualified immunity, there was no appealable claim to which a pendent claim could attach. Accordingly, the panel dismissed the appeal in its entirety.

COUNSEL

Timothy A. Scott (argued) and Marcus S. Bourassa, McKenzie Scott PC, San Diego, California; Geralyn L. Skapik, Matthew Falkenstein, and Blair J. Berkley, Skapik Law Group, Chino Hills, California; Eric C. Morris, Southern California Lawyers Group PC, Chino Hills, California; for Plaintiffs-Appellees.

Steven J. Renick (argued) and Mildred K. O'Linn, Manning & Kass Ellrod Ramirez Trester LLP, Los Angeles, California; Yury A. Kolesnikov, Manning & Kass Ellrod Ramirez Trester LLP, San Diego, California; for Defendants-Appellants.

OPINION

MILLER, Circuit Judge:

In an interlocutory appeal from an order denying a motion for summary judgment on the basis of qualified immunity, we may consider “whether the facts establish a violation of a clearly established constitutional right.” *Peck v. Montoya*, 51 F.4th 877, 885 (9th Cir. 2022). But we may not review the district court’s assessment of the sufficiency of the evidence—“which facts a party may, or may not, be able to prove at trial.” *Id.* (quoting *Johnson v. Jones*, 515 U.S. 304, 313 (1995)). This case presents the question whether we may review a district court’s decision not to exclude certain evidence as a discovery sanction. We hold that we may not.

Late in the evening of July 22, 2021, several callers reported to the Azusa, California, police that a man in the courtyard of an apartment complex was acting erratically. The callers said that the man was talking to himself and had threatened a shooting, but they gave conflicting accounts of whether he might be armed. Based on information provided by the building manager, a 911 dispatcher identified the man as Adrian Rios and determined that he was subject to a domestic-violence restraining order.

Several police officers arrived at the scene. Over the course of approximately half an hour, they observed Rios walk back and forth as he repeated the phrase, “bang, bang, shots fired,” while making the shape of a gun with his hands. Although some of the officers had a clear view of Rios and others did not, none saw him with a weapon. The officers ordered Rios to get on the ground, but he did not comply.

Some of the officers then approached Rios to take him into custody. The nature of the resulting interaction is disputed, but it is not disputed that in the course of handcuffing Rios, the officers twice used a Taser and repeatedly punched, kicked, or otherwise struck him—by their own description, at least 24 times. Rios suffered serious brain damage and is now in a persistent vegetative state.

Rios and his two children, Adrian Rios Jr. and M.P.R., brought this action against the City of Azusa, Los Angeles County, seven individual police officers, and a paramedic. They asserted excessive-force and other constitutional claims under 42 U.S.C. § 1983, various state-law tort claims, and claims under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101.

During discovery, counsel for plaintiffs became aware that Michael Brown, a resident of the apartment complex

where the incident took place, had filed a pro se complaint against the Azusa Police Department alleging excessive force in an unrelated episode. Counsel promptly interviewed Brown. During the interview, counsel realized that they had already spoken with Brown shortly after the July 2021 incident involving Rios. In that earlier conversation, Brown said that he had witnessed Rios's beating, but he refused to identify himself or provide a detailed statement. This time, however, he was willing to do so. A few days before the close of discovery, plaintiffs supplemented their initial disclosures under Federal Rule of Civil Procedure 26(a), which had not mentioned Brown, to state that Brown was likely to have discoverable information.

Soon thereafter, plaintiffs provided defendants with a declaration by Brown, which they ultimately included as an exhibit to their summary-judgment papers. In the declaration, Brown stated that although Rios "moved his hands and arms like a gun and said words about a gun, it was easy to see that he did not have a gun." He added that as the officers approached, Rios "did not move in any manner I would describe as a fighting stance or threat." According to Brown, "[r]ather than threaten the officers in any way, . . . Rios lay down on his stomach in front of them," and it appeared that "he was obeying their command to get down." At that point, Brown said, the officers "proceeded to kick Mr. Rios repeatedly while he lay on the ground defenseless," even though Rios "was not fighting back," "did not reach for a taser or swing at the officers," and "did not appear to be resisting in any way." Thereafter, "[o]ne of the officers knelt on top of Mr. Rios near his head or neck."

Defendants moved for summary judgment, arguing that the officers were entitled to qualified immunity on the excessive-force claim. Under the doctrine of qualified

immunity, officers are shielded from civil liability under section 1983 unless a plaintiff establishes that their conduct “violate[d] clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Defendants argued that “the force used was reasonable and not excessive under the totality of the circumstances,” and that no “controlling authority at the time of the incident” had clearly established otherwise.

Defendants also moved to strike Brown’s declaration under Federal Rule of Civil Procedure 37(c)(1), which provides that when a party fails to identify a witness as required by Rule 26, “the party is not allowed to use that . . . witness to supply evidence . . . unless the failure was substantially justified or is harmless.” Fed. R. Civ. P. 37(c)(1). Defendants argued that plaintiffs had not timely disclosed Brown as an “individual likely to have discoverable information.” Fed. R. Civ. P. 26(a)(1)(A)(i). The late disclosure of Brown’s identity, they said, was not justified and had caused prejudice by “depriv[ing] Defendants of an opportunity to depose Mr. Brown.”

The district court denied the motion to strike Brown’s declaration. It found “that Plaintiffs timely disclosed Brown as a potential witness soon after learning that he saw the incident with Rios.” “Regardless,” the court added, it would “extend the discovery deadline” to allow defendants to take Brown’s deposition “if they so wish.”

The district court went on to deny summary judgment in relevant part, concluding that “viewing the facts and evidence in the light most favorable to Rios, a rational jury could find that the Officer Defendants used excessive force against Rios in violation of clearly established law.” The

court also denied summary judgment with respect to some of the state-law and ADA claims.

Defendants appeal. The crux of their argument is that the district court abused its discretion in denying their motion to strike Brown’s declaration. In their view, because Brown’s declaration “was the *only* evidence relied upon by the district court to find a genuine dispute of facts,” the district court erred in denying summary judgment.

That argument is not properly before us. We have jurisdiction over appeals from “final decisions of the district courts.” 28 U.S.C. § 1291; *see Geo Grp., Inc. v. Menocal*, 146 S. Ct. 774, 781 (2026). Orders denying summary judgment are not final, so they are not normally immediately appealable. *Plumhoff v. Rickard*, 572 U.S. 765, 771 (2014). But because qualified immunity is “an immunity from suit rather than a mere defense to liability,” the Supreme Court has held that orders denying qualified immunity are effectively final and are therefore subject to immediate appeal under the collateral-order doctrine. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (emphasis omitted); *see Plumhoff*, 572 U.S. at 771–72. In such an appeal, we may review “whether the facts establish a violation of a clearly established constitutional right, thus defeating qualified immunity.” *Peck*, 51 F.4th at 885. But under the Supreme Court’s decision in *Johnson v. Jones*, we may *not* review “a portion of a district court’s summary judgment order that, though entered in a qualified immunity case, determines only a question of evidence sufficiency, *i.e.*, which facts a party may, or may not, be able to prove at trial.” 515 U.S. at 313 (internal quotation marks omitted). As we have recently summarized the rule of *Johnson*, a “public official may not immediately appeal a fact-related dispute about the pretrial record, namely, whether or not the evidence in the pretrial

record was sufficient to show a genuine issue of fact for trial.” *Peck*, 51 F.4th at 885 (quoting *Estate of Anderson v. Marsh*, 985 F.3d 726, 731 (9th Cir. 2021)).

We have observed that “the distinction between making sure that only ‘reasonable inferences’ are drawn (which we may do) and answering questions of ‘evidence sufficiency’ (which we may not) is often difficult to discern.” *Peck*, 51 F.4th at 885. In this case, however, it is not difficult at all.

Defendants make no argument about what inferences should be drawn from the facts before the district court that does not first assume that Brown’s declaration should have been excluded. Crucially, they do not argue that, if Brown’s declaration is included as part of the summary-judgment record, they are nevertheless entitled to qualified immunity on the excessive-force claim. *See Blankenhorn v. City of Orange*, 485 F.3d 463, 481 (9th Cir. 2007) (recognizing that clearly established law prohibits “gang-tackling without first attempting a less violent means of arresting a relatively calm trespass suspect—especially one who . . . was at the moment not actively resisting arrest”); *Drummond ex rel. Drummond v. City of Anaheim*, 343 F.3d 1052, 1061–62 (9th Cir. 2003) (recognizing that clearly established law prohibits the application of bodyweight pressure to the back of a compliant individual).

Instead, defendants’ argument is about which facts were properly before the district court—specifically, whether the facts set out in the Brown declaration should have been part of the summary-judgment record, or whether the district court should instead have excluded that declaration as a discovery sanction. That is a question about evidence sufficiency that we may not review in an interlocutory

appeal. We thus lack jurisdiction to review the district court's denial of qualified immunity.

In an effort to avoid *Johnson*, defendants frame their argument not as one of evidence sufficiency but instead as raising the question whether the district court abused its discretion in denying their motion to strike the Brown declaration under Rule 37. That framing runs into a different problem: Discovery rulings are not “final decisions” and therefore are not immediately appealable. 28 U.S.C. § 1291; *see Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 107–08 (2009); *Admiral Ins. Co. v. United States Dist. Ct. for Dist. of Ariz.*, 881 F.2d 1486, 1490 (9th Cir. 1989).

Defendants invoke pendent appellate jurisdiction, which allows us to “review an ‘otherwise non-appealable ruling’ in certain limited situations when it ‘is inextricably intertwined with or necessary to ensure meaningful review of the order properly before us on interlocutory appeal.’” *CDK Glob. LLC v. Brnovich*, 16 F.4th 1266, 1273 (9th Cir. 2021) (quoting *Arc of Cal. v. Douglas*, 757 F.3d 975, 992–93 (9th Cir. 2014)); *see Swint v. Chambers Cnty. Comm’n*, 514 U.S. 35, 50–51 (1995). Defendants argue that review of the Rule 37 question is necessary to ensure meaningful review of the qualified-immunity question. As they put it, an appellate court “can only conduct a meaningful review if it knows what evidence was properly within the district court’s purview when it ruled on the summary judgment motion.” But because we lack jurisdiction to review the denial of qualified immunity, there is “no appealable claim on which a pendent claim could attach.” *McKinney v. Duplain*, 463 F.3d 679, 693 (7th Cir. 2006).

Finally, even if the order denying qualified immunity were appealable, qualified immunity could be available only

to the individual defendants, and only with respect to the claims under section 1983. Defendants also seek to appeal the remaining claims in the case, asserting that pendent appellate jurisdiction allows interlocutory review of the denial of summary judgment on those claims in conjunction with the qualified-immunity appeal. But because there is no proper appeal of the denial of qualified immunity, there is no appeal to which the other claims can be pendent. We therefore dismiss the appeal in its entirety.

DISMISSED.